

IN THE SENATE OF THE UNITED STATES.

MARCH 19, 1880.—Ordered to be printed.

Mr. JONES, of Florida, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany bill S. 826.]

*The Committee on Naval Affairs, to whom was referred the bill (S. 826) for the relief of several persons impressed into the United States naval service, have carefully considered the same, and submit the following report:*

The claimants under this bill are John Adams and ten others. A bill making a specific appropriation for the relief of each of said claimants was introduced into the House of Representatives during the second session of the Forty-fifth Congress. It passed the House during the third session of that Congress, and was sent to the Senate, where it was amended and passed on the last day of the session, and returned to the House for concurrence in the amendment too late to be called up or acted on in the House. These claimants comprise the survivors of the crews of the steamers *Champion No. 3* and *Champion No. 5*, which vessels were engaged in company in the same service, and were impressed under the same order, at the same time, and for the same expedition, and proceeded thereon under the same command, and were destroyed while attempting to run the same battery, one on the 26th of April, 1864, and the other the day following. The claims are for the payment of wages during the same captivity, and were prosecuted in the same manner for payment, and rejected for the same reasons.

After a full examination of the evidence in support of this bill, the committee find the facts are accurately set forth in the report made to the House of Representatives by the Committee on War Claims in the case of John Ray. (See House Report 208, second session, Forty-fifth Congress.) John Ray's claim was the same as that of these parties, and for whose relief an act was passed at the second session of the Forty-fifth Congress. Your committee agree with and adopt the said report, which is as follows:

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In April, 1864, said Ray was employed, at a salary of \$400 per month, as pilot of the steamboat *Champion No. 3*, then employed in towing barges of coal for the Army and Navy of the Lower Mississippi. When the boat reached the mouth of Red River, about the 15th of April, she was ordered and compelled, against the protest of her officers and crew, to proceed up that river to Alexandria, about 120 miles, and report to Commodore D. D. Porter with one barge of coal, and when she did so she was then required and compelled, against the protest of officers and crew, to proceed about 120 miles further up the river to assist in raising the sunken United States vessel *Eastport*.

Commodore Porter accompanied the expedition in his flag-boat and commanded it. On the return they came to a Confederate battery of 19 guns, meantime erected near the mouth of Cain Creek, and in running the same, under the orders of Commodore

Porter, the boiler of the *Champion No. 3* was exploded by a shot, and only seven persons out of 170 on board escaped with their lives. The *Champion No. 5* was also totally destroyed, and the survivors of both crews made prisoners of war, and confined at Camp Ford, Texas, where they suffered privations and exposures scarcely paralleled in the history of the war. The claimant asks to be paid his wages during the time he was a prisoner.

This claim was presented to the accounting-officers of the Navy for payment, and rejected for want of authority to allow it, as it appears by the following extract from a letter of the Second Comptroller of the Treasury, in reply to a request on behalf of your committee for information:

"I entered upon the examination with reluctance, for I had already become impressed that the claimant, as a survivor of the terrible disaster referred to and the dangers of the long and irksome incarceration, deserved substantial recognition at the hands of the government, and I knew of no law that authorized the adjustment of his claim by the accounting-officers of the Treasury. After examination of the case it was with regret that I came to the conclusion that his case is *casus omissus*.

"Congress has directly provided (R. S., § 3483) that one who sustains damage by the destruction by an enemy of a vessel, while such property is in the military service, shall be paid the value of the vessel. And section 4693, Revised Statutes, has been construed to authorize the payment of a pension in a case where the terms of employment were the same as that under which claimant was engaged at the time of the disaster. I have examined carefully the regulations of the Army and of the Navy and the acts of Congress, together with the authorities cited by the claimant's attorney, and I am unable to find any like provision that would authorize the accounting-officers of the Treasury to sustain this claim without further legislation.

"I am, very respectfully,

"W. W. UPTON,

"Second Comptroller."

Your committee fully concur with the Second Comptroller as to the justice and merit of this claim.

Under the laws above referred to, the owner of the vessel has been paid its value and the widows of the killed have been pensioned. No good reason exists why the survivors should not be paid wages during the time of their captivity. If their comrades who lost their lives were in the service of the United States so as to entitle their widows to pension, surely the survivors were in the service and entitled to pay. If the owner of the vessel, who risked his property in the service of the United States, was entitled to compensation for its loss, then *a fortiori* (as life and liberty are dearer than property) he who risked his life and lost his liberty in the service of the United States should at least have pay for the time lost in captivity. And such is the ruling and practice in auditing accounts for service in the Quartermaster's Department of the Army in precisely similar cases, as appears by the following letter received by your committee in reply to an inquiry addressed to the Third Auditor of the Treasury, who has charge of that duty in Army accounts:

"TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,

"Washington, D. C., January 24, 1878.

"In response to your letter of the 22d instant, asking as to the practice of this office in reference to claims filed by employés of the Quartermaster's Department for compensation as such employés while held as prisoners of war, you are informed that it has not been the custom of this office to make any allowance to such persons merely as damages for detention while in captivity. The action of the office has been founded on the theory that persons hired by the Quartermaster's Department and carried on the rolls of that department continue to be the servants thereof during captivity, and are entitled to be paid at the rate of hiring until discharged from the service. \* \* \*

"The favorable action of this office has not, however, been confined to persons in the service of the Quartermaster's Department under express contract, but has been extended to the crews of boats which have been impressed into the military service, which crews have been subsequently captured, upon the theory that by the impressment of the boat the government makes the employés of the owners its servants.

"There is no special statute authorizing these allowances, but the act of 1817 (sec. 277, Rev. Stats.), imposing upon the Third Auditor the duty of examining all accounts of the Quartermaster's Department, has been deemed to confer ample authority for the action taken.

"In reference to compensation, the rule has been to continue to an employé the pay he was receiving from his employer at the time of the capture, and to continue the same while he is actually held as a prisoner of war—that is to say, up to the time of his parole—allowing, in addition, a reasonable time for his return to the port of shipment.

"I am, sir, very respectfully, your obedient servant,

"HORACE AUSTIN, Auditor."

It would thus seem that in precisely similar cases pay is allowed in the Army and disallowed in the Navy. Your committee do not question the correctness of the ruling in either case. It is probably *casus omissus* in the case of the Navy, as the Second Comptroller suggests; but it is evident that the government should be prompt to mete out the same justice to the gallant men who do the same services in the time of danger, whether done in the Army or the Navy. Whether an act be performed under the orders of a general or a commodore can make no possible difference either in its merit or its worth.

Owing to some doubt as to the length of time some of these men were held in captivity, your committee especially recommend that feature of the bill which provides that proof shall be submitted to the proper accounting officers of the Treasury Department, whose duty it will be to adjust the same.

Although the wages for like services on Red River (where these men were captured) was much greater than they were receiving for service on the Mississippi, yet your committee feel bound by the rule of the Department as above stated, and recommend the payment of the same wages they were receiving when impressed, together with compensation for rations which they were receiving in addition to their wages at the date of their impressment.

the following is a list of the names of the persons who were present at the meeting of the committee on the 10th of February, 1867, at the residence of the Hon. John A. Bingham, at New York.

John A. Bingham, Chairman; Charles F. Smith, Secretary; John W. Foster, John C. Spencer, John W. Phelps, John W. Aldrich, John W. Bennett, John W. Caldwell, John W. Chase, John W. Clark, John W. Coffey, John W. Edwards, John W. Evans, John W. Fox, John W. Gale, John W. Hendon, John W. Jones, John W. Keith, John W. Lester, John W. May, John W. McKim, John W. Miller, John W. Morgan, John W. Newell, John W. Phelps, John W. Ransom, John W. Reed, John W. Rogers, John W. Russell, John W. Tamm, John W. Tilden, John W. Tracy, John W. Van Hook, John W. Wallcut, John W. Webb, John W. Wheeler, John W. Wilson, John W. Wood, John W. Wright, John W. Young.

The committee on the 10th of February, 1867, at the residence of the Hon. John A. Bingham, at New York, considered the report of the committee on the 10th of February, 1867, at the residence of the Hon. John A. Bingham, at New York, and recommended that the same be referred to the committee on the 10th of February, 1867, at the residence of the Hon. John A. Bingham, at New York, for their consideration.

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